IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2214 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KIRITKUMAR CHAMPAKLAL RANA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP for Respondent No. 1,2 & 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

#. The petitioner - Kiritkumar Champaklal Rana, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Surat City, Surat, in exercise of powers under Section 3(1) of the PASA Act, dated December 30, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged this order of detention on various counts. However, Mr. Prajapati, learned advocate for the petitioner has pressed into service the ground of non- application on the part of the detaining authority. Mr. Prajapati has drawn attention of this Court to the grounds of detention wherein on internal page 2, the detaining authority while referring to the details of statement of anonymous witness no.1 refers to incident dated November 25, 1999. In contrast of this, Mr. Prajapati has drawn attention of this Court to the statement of anonymous witness no.1 wherein he refers to an incident that occurred on November 21, 1999. Mr. Prajapati submitted that this indicates that the detaining authority has not applied its mind to the facts of the case. Another fold of argument is that if what is stated in the grounds of detention is correct, then the detenue is not supplied copy of the statement of anonymous witness who refers to an incident dated November 25, 1999 and, therefore, right of the detenue of making an effective representation is affected, which would vitiate the detention of the detenue. He, therefore, urged that this petition may be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. This petition deserves to be allowed on the ground raised on behalf of the detenue by learned advocate that grounds of detention refer to statement of anonymous witness no.1 for incident that is alleged to have occurred on November 25, 1999 whereas if the statement of that anonymous witness is seen, it refers to incident of November 21, 1999. This is a clear non-application of mind on the part of the detaining authority. Further, assuming that what is stated in the grounds of detention is correct, then the detenue is not supplied with the copy of statement of such anonymous witness which referred to incident dated November 25, 1999. This

would, infringe the right of the detenue of making an effective representation. Third fold of argument which requires to be considered is that the detaining authority has relied on the statement of anonymous witness in respect of the incident dated November 21, 1999 which is not referred by the detaining authority. It has, however, been considered. The statement would be irrelevant and extraneous so far as the present order of detention is concerned and, therefore, consideration of irrelevant and extraneous material by the detaining authority would vitiate the order of detention. The petition deserves to be allowed on the foregoing reasons.

#. The petition is allowed. The impugned order of detention dated December 30, 1999 is hereby quashed and set aside. The detenue - Kiritkumar Champaklal Rana is ordered to be set at liberty forthwith, if not required in any other matter. Rule made absolute with no order as to costs.

[A.L. DAVE, J.]

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